First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE ENROLLED ACT No. 1980

AN ACT to amend the Indiana Code concerning education finance.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 21-9-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. "Account beneficiary" means the individual ~~to whom (or for whose benefit) the assets of an account transfer at the time the individual incurs allowable expenses.~~ **who is:**

(1) designated as the beneficiary of an account at the time the account is established under this article; and

(2) designated as the new beneficiary when beneficiaries are changed.

SECTION 2. IC 21-9-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. "Account owner" means the individual (or individuals) designated at the time an account is opened as having the right to ~~withdraw funds from the account before the account is disbursed to or for the benefit of an account beneficiary.~~ **do the following:**

(1) Select or change the designated beneficiary of an account.

(2) Designate a person other than the designated beneficiary as a person to whom funds may be paid from the account.

(3) Receive distributions from the account if no other person is designated.

SECTION 3. IC 21-9-2-9.5 IS ADDED TO THE INDIANA CODE

AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 9.5. "Contribution" means a payment directly allocated to an account for the benefit of an account beneficiary or used to pay late fees or administrative fees associated with the account.**

SECTION 4. IC 21-9-2-10.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 10.5. "Distributee" means the designated beneficiary or the account owner who receives or is treated as receiving a distribution from an account established under this article.**

SECTION 5. IC 21-9-2-17.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 17.5. (a) "Member of the family" means an individual who is one (1) of the following relatives of a designated beneficiary:**

(1) A lineal descendant of the designated beneficiary.
(2) A lineal ancestor of the designated beneficiary.
(3) A brother, sister, stepbrother, or stepsister of the designated beneficiary.
(4) A stepparent of the designated beneficiary.
(5) A stepchild of the designated beneficiary.
(6) A niece or nephew of the designated beneficiary.
(7) An aunt or uncle of the designated beneficiary.
(8) An individual related to the designated beneficiary as follows:
(A) A daughter-in-law.
(B) A son-in-law.
(C) A mother-in-law.
(D) A father-in-law.
(E) A sister-in-law.
(F) A brother-in-law.
(9) The spouse of the designated beneficiary or the spouse of an individual described in subdivisions (1) through (8).

(b) For purposes of this section, an adopted child of an individual is treated as a natural child of the individual.

(c) For purposes of this section, the terms brother and sister include a brother or sister by the half blood.

SECTION 6. IC 21-9-2-19.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 19.5. (a) "Qualified higher education expenses" means the following expenses required for the enrollment or attendance of a designated beneficiary at a higher education institution:**

(1) Tuition.
(2) Fees.
(3) Costs of books, supplies, and equipment.
(4) Room and board.

(b) The amount of room and board treated as a qualified higher education expense may not exceed the amount set forth in the applicable federal regulations.

SECTION 7. IC 21-9-2-19.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 19.7. "Rollover distribution" means a distribution or transfer from an account of a designated beneficiary that is transferred to or deposited within sixty (60) days of the distribution or transfer into an account of another individual who is a member of the family of the designated beneficiary. A distribution is not a rollover distribution unless there is a change in the beneficiary.**

SECTION 8. IC 21-9-4-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7. In addition to any power granted by this article, the board has all powers necessary or convenient to carry out and effectuate the purposes and objectives of this article, the purposes and objectives of the education savings programs, and the powers delegated by law or executive order, including the following powers:

(1) To develop and implement the education savings programs and, notwithstanding any provision in this article to the contrary, other savings programs and services consistent with the purposes and objectives of this article, through:
(A) rules adopted under IC 4-22-2; or
(B) rules, guidelines, procedures, or policies established by the board and approved by the higher education commission.

(2) **To conform the education savings programs and, notwithstanding any provision in this article to the contrary, other savings programs and services consistent with the purposes and objectives of this article, to the requirements of a qualified state tuition program set forth in Section 529 of the Internal Revenue Code and all applicable federal regulations, through:**
(A) rules adopted under IC 4-22-2; or
(B) guidelines, procedures, or policies established by the board.

(3) To retain professional services, including the following:
(A) Financial advisers and managers.

(B) Custodians and other fiduciaries.
(C) Investment advisers and managers.
(D) Accountants and auditors.
(E) Consultants or other experts.
(F) Actuarial services providers.
(G) Attorneys.

~~(3)~~ **(4)** To establish minimum account deposit amounts (both initial and periodic).

~~(4)~~ **(5)** To employ persons, if the board chooses, and as may be necessary, and to fix the terms of their employment.

~~(5)~~ **(6)** To recommend legislation to the governor and general assembly.

~~(6)~~ **(7)** To apply for designation as a tax exempt entity under the Internal Revenue Code.

~~(7)~~ **(8)** To adopt such rules, bylaws, procedures, guidelines, and policies as are necessary to carry out the education savings programs and other savings programs and services and the authority's management and operations.

~~(8)~~ **(9)** To sue and be sued.

~~(9)~~ **(10)** To provide or facilitate provision of benefits and incentives for the benefit of qualified beneficiaries, account owners, contributors, or account beneficiaries as the board's resources allow or as are directed or provided for by the general assembly.

~~(10)~~ **(11)** To conform the education savings programs and other savings programs to federal tax advantages or incentives, as in existence periodically, to the extent consistent with the purposes and objectives of this article.

~~(11)~~ **(12)** To interpret, in rules, policies, guidelines, and procedures, the provisions of this article broadly in light of the purposes and objectives of this article.

~~(12)~~ **(13)** To charge, impose, and collect administrative fees and service charges in connection with any agreement, contract, or transaction under an education savings program or other savings program or services.

~~(13)~~ **(14)** To have perpetual succession.

SECTION 9. IC 21-9-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. In addition to any other powers granted by this article, the board has all powers necessary or convenient to carry out and effectuate the purposes and objectives of this chapter, IC 21-9-8, and IC 21-9-9, the purposes and objectives of the family college savings programs that may be established under this article, and the powers delegated by other laws or executive orders, including the following:

(1) To establish policies and procedures ~~including~~ ~~penalties,~~ to govern ~~withdrawals~~ **distributions** from accounts ~~in~~ ~~the~~ ~~event~~ ~~of:~~ **that are not:**

(A) **made on account of** the death or disability of an account beneficiary;

(B) ~~the denial of admission or acceptance by a higher education institution of an account beneficiary; and~~ **made on account of the receipt of a scholarship (or allowance or payment described in Section 135(d)(1)(B) or (C) of the Internal Revenue Code) by the account beneficiary to the extent the amount of the distribution does not exceed the amount of the scholarship, allowance, or payment; or**

(C) ~~other hardships or special circumstances affecting account owners and account beneficiaries.~~ **rollover distributions.**

(2) ~~However, the authority must~~ **To** establish penalties for ~~early withdrawal~~ **withdrawals** of money from accounts ~~in circumstances other than hardships described in this subdivision.~~ **that are not used exclusively for the qualified higher education expenses of an account beneficiary unless a circumstance described in subdivision (1) applies.**

~~(2)~~ **(3)** To establish policies and procedures regarding the transfer of individual accounts and the designation of substitute account beneficiaries.

~~(3)~~ **(4)** To establish policies and procedures for withdrawal of money from accounts for, or in reimbursement of, ~~allowable expenditures.~~ **qualified higher education expenses.**

~~(4)~~ **(5)** To establish policies and procedures regarding recapture of all or a part of prior or current benefits or incentives allocated or allocable to accounts, including, in appropriate circumstances in the board's judgment, recapture as a precondition to withdrawal.

~~(5)~~ **(6)** To enter into agreements with account owners, account beneficiaries, and contributors, with the agreements naming:

(A) the account owner, who must be an adult or emancipated minor; and

(B) the account beneficiary, who may also be the account owner, if qualified.

~~(6)~~ **(7)** To establish accounts for account beneficiaries. However:

(A) the authority shall establish a separate account for each account beneficiary; and

(B) an individual may be the beneficiary of more than one (1) account.

~~(7)~~ **(8)** To enter into agreements with financial institutions relating to accounts as well as deposits, withdrawals, penalties, recaptures of benefits or incentives, allocation of benefits or incentives, and transfers of accounts, account owners, and account beneficiaries.

~~(8)~~ **(9)** To conform the trust program and the account program to federal tax advantages or incentives, as the advantages or incentives may exist periodically, to the extent consistent with the purposes and objectives of this article.

~~(9)~~ **(10)** To interpret, in rules, policies, guidelines, and procedures, the provisions of this article broadly considering the purposes and objectives of this article.

SECTION 10. IC 21-9-7-5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 5. Contributions by an account owner shall be made in cash only, with available contribution payment options determined by the authority. These options may include payroll deductions, electronic funds transfers, or other methods determined by the authority.**

SECTION 11. IC 21-9-7-6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 6. An account owner or beneficiary may not direct the investment of any contributions or the earnings on any contribution. However, the account owner or beneficiary may select an investment strategy from among different investment strategies designed by the board at the time an initial contribution is made to establish the account.**

SECTION 12. IC 21-9-7-7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 7. Funds held in the family college savings trust program or the family college savings account program may not be used by an account owner or beneficiary as security for a loan.**

SECTION 13. IC 21-9-7-8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 8. (a) Contributions to an individual account may not exceed the amount necessary to provide for the qualified higher education expenses of the account beneficiary.**

(b) The authority shall adopt rules under IC 4-22-2 to determine the maximum account balance applicable to all accounts of account beneficiaries with the same expected year of enrollment. The

maximum account balance may not exceed the amount determined by actuarial estimates that is necessary to pay the account beneficiary's qualified higher education expenses for five (5) years of enrollment at the highest cost institution identified by the authority.

SECTION 14. IC 21-9-7-9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 9. (a) The authority shall adopt rules under IC 4-22-2 to establish a penalty for a distribution that is not used exclusively for the qualified higher education expenses of an account beneficiary. However, the authority may not establish a penalty for distributions described in IC 21-9-7-1(1).**

(b) The penalty imposed under this section must equal at least ten percent (10%) of the earnings portion of the distribution.